

0100920003

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ELIAS C. ALVORD (1942)
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20006-2973

OF COUNSEL
URBAN A. LESTER

(202) 393-2266

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File
January 11, 1996

Countersigned
Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), and the regulations thereunder, are three (3) copies of a Non-Recourse Assignment of Lease Schedule, dated December 27, 1995, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177. The Lease, which is the subject of the Assignment, is attached as Exhibit I.

The names and addresses of the parties to the enclosed document are:

Assignor: Lease Plan U.S.A., Inc.
180 Interstate North, Suite 400
Atlanta, Georgia 30339

Assignee: MetLife Capital, Limited Partnership
10900 N.E 4th Street, Suite 500
Bellevue, Washington 98004

A description of the railroad equipment covered by the enclosed document is:

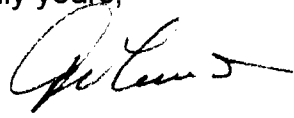
Two (2) General Motors 1996 Electro-Motive F59PHI Locomotives,
Vehicle ID# 946543-0001 and 946543-0002

Mr. Vernon A. Williams
January 11, 1996
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return two stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a stylized flourish at the end.

Robert W. Alvord

RWA/bg
Enclosures



Interstate Commerce Commission
Washington, D.C. 20423-0001

1/11/96

Office Of The Secretary

Robert W. Alvord
Alvord And Alvord
918 Sixteenth St., NW, Ste. 200
Washington, DC., 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/11/96 at 12:30PM , and assigned recordation number(s). 10880.

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

(0100920003)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE

Reference is made to that certain Master Lease Agreement by and between **Lease Plan U.S.A., Inc.**, as lessor, and Philip Morris Incorporated, as lessee, dated October 16, 1995, a copy of which is attached hereto as Exhibit 1, and more specifically, to that certain Lease Schedule to such Master Lease Agreement numbered 95-1, dated October 16, 1995, having aggregated unpaid rentals of Four Million Five Hundred Thirty Three Thousand Nine Hundred Four Dollars and Twenty Cents (\$4,533,904.20), as attached hereto as Exhibit 2 (such Lease Schedule, together with the terms of the Master Lease as incorporated therein, are collectively referred to herein as the "Lease").

FOR VALUE RECEIVED, on this 27 day of December 1995 (the "Effective Date"), the undersigned Assignor (the "Assignor") hereby sells and assigns, as an outright assignment and not as an assignment for security, to **MetLife Capital Limited Partnership** (the "Assignee"), its successors and assigns, the Lease, all Assignor's right, title and interest in, to and under the Lease, the property leased pursuant thereto (the "Equipment") as evidenced by the execution and delivery of a bill of sale in the form attached hereto as Exhibit 3, all amounts due or to become due under the Lease or in connection with the exercise by the Lessee of an option, if any, to purchase the Equipment, or renew the Lease, and all guarantees, instruments and documents, if any, pertaining thereto (the Lease, together with all guarantees, instruments and documents pertaining thereto, if any, are collectively referred to herein as the "Lease Documents"), together with the right either in the Assignor's or the Assignee's name to take such actions or institute such proceedings as the Assignor would have been entitled to take or initiate but for this Assignment; provided that the Assignee shall notify and obtain the consent of the Assignor prior to instituting any proceeding or action in the Assignor's name. In consideration of such assignment, pursuant to which this Assignment is made, Assignee hereby assumes the obligations of lessor under the Lease and agrees to observe and perform all of the terms, covenants, conditions and provisions of the Lease therein provided to be observed and performed by lessor thereunder from and after the Effective Date; provided however that Assignee's obligation hereunder or under the Lease shall not extend to any liability of lessor under the Lease to Lessee resulting from any prior lessor's acts, errors or omissions prior to the Effective Date of this Assignment, and Assignor shall indemnify and hold Assignee harmless from and against any claim, liability, charge, cost, expense or fee, including reasonable attorneys' fees, incurred or suffered by Assignee as the result of, in connection with or arising out of any claim by Lessee based on such prior lessor's acts, errors or omissions prior to the Effective Date of this Assignment. Except as otherwise expressly provided herein, this Assignment shall be without recourse against Assignor with respect to any default by the Lessee under the Lease.

In order to induce the Assignee to accept this Assignment, the Assignor hereby represents, warrants and covenants:

- (i) that the Lease Documents are the only guarantees, instruments, documents or other writings relating to the Lease as now in effect and the amounts due or to become due thereunder, and the Lease Documents constitute the exclusive statement of the agreement between the Assignor and the Lessee and among the Assignor and any other party or parties with respect to the subject matter of the Lease and the Equipment;
- (ii) that original counterparts of the Lease Documents (other than the Master Lease Agreement), and a true, correct and complete copy of the Master Lease Agreement, each as now in effect, have been or contemporaneously herewith are being delivered by the Assignor to the Assignee;
- (iii) that each of the Lease Documents is genuine, is the legal, valid and binding obligation of the Lessee or other parties thereto, and is enforceable in accordance with its terms, subject to bankruptcy, insolvency or other similar laws affecting the enforcement of creditor's rights generally and subject to general principles of equity (the subsequent existence of any such

bankruptcy or insolvency proceeding or application of other similar law shall not affect the non-recourse terms of this Assignment);

- (iv) that any advance rentals are accurately described in the Lease Documents, and that the aggregate unpaid rentals now owed the Assignor under the Lease without offset, deduction, counterclaim or defense of any kind is the amount first set forth above;
- (v) that the Lease, the Equipment, all amounts due or to become due under the Lease Documents or in connection with the exercise by the Lessee of an option, if any, to purchase the Equipment, and all other rights created by the Lease Documents are free and clear of all liens, encumbrances, security interests and other rights and claims adverse to the Assignor's interest therein with the exception of Lessee's interest therein and interests required to be discharged by Lessee under the Lease;
- (vi) that Assignor has prepared and filed, or prepared and presented to Assignee for filing: (a) UCC lease notification statements showing Assignor as original lessor and Lessee as lessee in or for the following locations:

N/A

and (b) UCC financing statements covering the assignment of the Assignor's interest in the Equipment and the Lease proceeds made hereby, showing Assignor as debtor and Assignee as secured party, in or for the following locations:

Cobb County, Georgia

it being agreed (x) that the foregoing UCC statements have been reviewed by Assignee and are satisfactory to it, (y) if the Equipment covered by the Lease is titled motor vehicle equipment, the certificates of title shall indicate as owner, where legally permissible, Assignor as agent for Assignee, or such other designation as approved in writing by Assignee from time to time, without disclosure of any secured party, and (z) to the extent that Assignee reasonably requires additional filings or amendments/endorsements or existing filings, Assignor will cooperate in furnishing same.

- (vii) that the Lease Documents and all transactions in connection therewith do not violate any applicable laws and regulations;
- (viii) that Assignor is not in default under the Lease Documents, has no knowledge of any Lessee or any other respective obligor default under the Lease Documents, and has no knowledge of any facts impairing the value or validity of the Lease Documents, any rights created thereby, the Equipment or this Assignment;
- (ix) that Assignor has good title to the Equipment, ownership of the Lease Documents, and that Assignor has all necessary power, right and authority to enter into this Assignment and to effect the transfers contemplated hereby;

- (x) Assignor represents and warrants that of a total of four counterpart Lease Schedules executed in the original by the parties thereto, only one is stamped "ORIGINAL" on its face and signature pages, and all others are so stamped "DUPLICATE." Assignor has given or contemporaneously herewith shall give possession of said "ORIGINAL" Lease Schedule to Assignee; and
- (xi) Assignor shall keep the Equipment and Lease Documents free and clear of any security interest, lien or encumbrance of any kind made or suffered by, through, or under Assignor and Assignor shall not sell, assign (by operation of law or otherwise) exchange or otherwise dispose of any of the Equipment or the Lease Documents.

Assignor shall indemnify and hold Assignee harmless from and against any and all loss, cost, damage, injury or expense (including court costs and reasonable attorney's fees) wheresoever and howsoever arising which Assignee may incur by reason of any breach by Assignor of any warranty, representation or covenant set forth herein.

If (a) Assignor breaches any of its representations and warranties made in subparagraphs (i) through (xi) subject to Assignor cure rights with respect to (vi) above, or such representations and warranties prove to be inaccurate or untrue when made, or Assignee's rights as lessor under the Lease are otherwise materially impaired as the result of such inaccuracy or untruth, then, at the Assignee's request, the Assignor shall repurchase the Lease, the Equipment, and all other rights and property previously assigned to Assignee hereunder, and shall assume all obligations with respect thereto. The repurchase price (the "Repurchase Price") shall be the Stipulated Loss Value for the Equipment as of the repurchase date as set forth on Exhibit 4 attached hereto, plus any expenses of collection, repossession, transportation and storage incurred by Assignee (including reasonable attorney's fees). Assignee shall provide written notice of the Repurchase Price and its method of calculation at the time Assignee requests Assignor to repurchase the Lease and Equipment. Payment of the Repurchase Price shall be made at Assignee's office not later than 15 days following Assignee's repurchase request. In the event Assignor fails to repurchase as herein provided, Assignee may take such enforcement action under the Lease Documents and (subject to the rights of the Lessee under the Lease) liquidate the Equipment as it deems appropriate, and Assignor shall be and remain liable for any costs or expenses incurred thereby and for any deficiency resulting therefrom. The Lease Documents and Equipment repurchased pursuant to this paragraph shall be reassigned to Assignor WITHOUT RECOURSE TO AND WITHOUT WARRANTIES (EXPRESS OR IMPLIED) by Assignee. At the time of repurchase, Assignee shall deliver to Assignor (i) the Lease Documents, (ii) bills of sale for and titles to the Equipment being repurchased, and (iii) all other business and maintenance records held by Assignee relating to the Equipment being repurchased, all sales taxes resulting from such repurchase shall be paid by Assignor.

If (a) Assignor breaches any of its representations and warranties made in subparagraphs (vi) above, or such representations and warranties prove to be inaccurate or untrue when made, Assignor shall have ninety (90) days (the "Assignor Cure Period") to cure such default or misrepresentation. Should Assignor fail to cure within the Assignor Cure Period, Assignee may attempt to cure such default or misrepresentation, at Assignor's expense, and Assignor hereby appoints Assignee, and executes and delivers to Assignee a power of attorney in form attached hereto as Exhibit 5 to evidence such appointment, its attorney-in-fact to execute all documents and take all actions to effect such cure. Shall Assignee be unable to cure the default or misrepresentation within one-hundred eighty (180) days from the end of the Assignor Cure Period by appropriate actions properly initiated and diligently pursued, Assignor shall repurchase the Lease, the Equipment and all other rights and property previously assigned to Assignee hereunder in accordance with the preceding paragraph, provided the Repurchase Price shall be MetLife's stipulated loss value calculated using MetLife's booked residual assumption with respect to the Equipment, plus costs, expenses and fees, including reasonable attorneys' fees, if any, incurred by Assignee while attempting to cure Assignee's default or misrepresentation.

The parties agree that "Lease" as used herein refers to the Lease Schedule named above, which incorporates the Master Lease Agreement by reference. Other schedules also incorporate such Master

Lease Agreement, and such schedules and the Master Lease Agreement (other than as so incorporated) are not assigned hereby.

Following the assignment and assumption hereunder, Assignor shall continue to administer and perform certain functions with respect to the Lease Documents and the Equipment assigned hereunder on behalf of and as the agent for Assignee pursuant to that certain Agency Agreement, dated as of August 1, 1993, by and between Assignor and Assignee. Assignor and Assignee have also entered into that certain Re-Marketing Agreement, dated as of August 1, 1993, wherein Assignor has agreed to assist Assignee in remarketing Equipment assigned by Assignor to Assignee upon the terms and conditions set forth therein. The residual sharing calculations under the Re-Marketing Agreement with respect to the specific Lease and Equipment assigned hereunder are attached hereto as Exhibit 6.

Any modification or amendment of this Assignment or any waiver of any provision hereof shall not be valid unless in writing and signed by the parties hereto or their authorized representatives. Waiver of any provision of this Assignment or failure to require strict performance of the provisions of this Assignment shall not be a waiver of future compliance therewith and such provision shall remain in full force and effect.

This Assignment and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Washington.

IN WITNESS WHEREOF, the parties execute this Assignment as of the date first written above.

ASSIGNOR:

Lease Plan U.S.A., Inc.

John J. Stasiowski
Donald E. Kraft, President V.P. Credit Operations

(Corporate Seal, if any)

S. Sullivan Callahan
Attest

The foregoing Assignment is hereby agreed to and accepted.

ASSIGNEE:

MetLife Capital, Limited Partnership

By METLIFE CAPITAL CORPORATION, General Partner

Vince Iaci
Vince Iaci, Vice President

STATE OF Georgia)

COUNTY OF Dobb) §

On this 27th day of December, 1995 before me, a Notary Public, personally appeared John Stasiowski and _____, to me known to be the V.P. Credit Operations and _____, respectively, of Lease Plan USA Inc., who executed the foregoing instrument and acknowledged the said instrument was the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

[SEAL]

Wanda E. Jackson
Notary Public in and for the State of _____,
residing at _____.

My Commission expires: _____

STATE OF WA)
COUNTY OF King)§

On this 28th day of December, 1995, before me, a Notary Public, personally appeared Vince Iaci and _____, to me known to be the Vice President and _____, respectively, of MetLife Capital Limited Partnership, who executed the foregoing instrument and acknowledged the said instrument was the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

[SEAL]

Renee F. Harrison
Notary Public in and for the State of WA,
residing at Kirkland.

My Commission expires: 12/1/97

Attachments

- Exhibit 1 - Master Lease Agreement
- Exhibit 2 - Lease Schedule
- Exhibit 3 - Form Bill of Sale
- Exhibit 4 - Stipulated Loss Values
- Exhibit 5 - Form Power of Attorney
- Exhibit 6 - Residual Sharing Calculations

EXHIBIT 1 TO NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE
MASTER LEASE AGREEMENT

Master Lease Agreement (the "Agreement") Control Number #40043 commencing on the 16th day of October, 1995 between Lease Plan U.S.A., Inc. ("Lessor") having its principal place of business at 180 Interstate North, Suite 400, Atlanta, GA 30339, and Philip Morris Incorporated ("Lessee") having its chief executive office at 120 Park Avenue, New York, NY 10017.

In consideration of the rents to be paid and the covenants to be performed by Lessee, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Equipment described in each Schedule executed by Lessee and Lessor incorporating this Agreement. The Equipment is leased for the term as set forth in each Schedule (the "Term"), subject to the provisions hereof. The first day of the Term is referred to as the Commencement Date and the last day is referred to as the Expiration Date. This Agreement shall commence on the date set forth above and shall not expire until fulfillment by Lessee of all obligations set forth herein and in any Schedule. Lessee agrees that each such Schedule shall be characterized as a "finance lease" within the meaning of Article 2A of the Uniform Commercial Code.

1. **MASTER LEASE; SCHEDULES; ACCEPTANCES.** This Agreement is intended to be incorporated by reference into one or more Schedules from time to time. As to Equipment leased pursuant to any such individual Schedule, the terms of such Schedule shall prevail over the terms hereof in case of conflict. Each Schedule shall constitute a separate and distinct individual lease contract and the manually executed copy of such Schedule marked "Original" shall be the instrument in which a security interest may be acquired by any assignee of Lessor. The rights, remedies, powers and privileges of Lessor or its assignee, and Lessee, respectively, under each such Schedule shall be interpreted separately and apart from any other Schedule. Notwithstanding any other provision hereof or of any other document involving a transfer, assignment, financing, granting of a security interest, or otherwise, any reference to this Agreement shall mean, shall be deemed to mean, and shall be limited to, this Agreement as the same is incorporated under any particularly identified specific Schedule. Certificates of Acceptance executed by Lessee shall conclusively evidence that Lessee has had the opportunity to inspect, examine and test the Equipment, that the Equipment is in all respects accepted by and satisfactory to Lessee, and that to the extent Lessee has any right to revoke, reject or return the Equipment as non-conforming, in breach of any warranty or otherwise, or to cancel or repudiate the Schedule, Lessee waives all such rights (provided, so long as no Event of Default has occurred and is continuing, Lessor hereby assigns to Lessee for the Term of the Schedule (to the extent permitted) all Manufacturer's warranties relating to the Equipment). To the extent that such warranties are not assignable, Lessor agrees to use reasonable efforts to enforce such warranties at Lessee's request and expense.

2. **RENT.** Lessee shall pay periodic rent ("Basic Rent") stated in each Schedule on the payment dates ("Payment Dates") stated in each Schedule, and all other amounts due hereunder, to Lessor at its address set forth above, or at such other address as Lessor may designate from time to time. This is an absolutely net lease, and any present or future law to the contrary notwithstanding, Lessee's obligation to pay Lessor or its assignee all amounts due hereunder is absolutely unconditional and this Agreement shall not terminate by operation of law or otherwise, nor shall Lessee be entitled to any abatement, reduction, setoff, counterclaim, defense or deduction with respect to any Basic Rent or any other sum payable hereunder, nor shall any obligations of Lessee hereunder be affected for any reason whatsoever, no matter how, when, or against whom asserted, arising or claimed.

3. **DISCLAIMER.** LESSEE ACKNOWLEDGES THAT THE EQUIPMENT IS OF THE TYPE, DESIGN, SIZE, CAPACITY AND MANUFACTURE SELECTED BY LESSEE; THAT LESSOR IS NOT A MANUFACTURER OR REPRESENTATIVE THEREOF IN, OR DEALER IN, THE EQUIPMENT; THAT LESSOR HAS NO DUTY TO ENFORCE ANY MANUFACTURER'S WARRANTIES ON BEHALF OF LESSEE EXCEPT AS SPECIFICALLY PROVIDED HEREIN; THAT LESSOR WILL NOT AND HAS NO OBLIGATION TO, INSPECT THE EQUIPMENT PRIOR TO DELIVERY TO LESSEE AND THAT LESSOR HAS NOT MADE AND WILL NOT MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, ON WHICH LESSEE MAY RELY, WITH RESPECT TO: THE MERCHANTABILITY, FITNESS, SAFETY, CONDITION, QUALITY, DURABILITY OR SUITABILITY FOR LESSEE'S PURPOSES OF THE EQUIPMENT IN ANY RESPECT, THE EQUIPMENT'S COMPLIANCE WITH ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT OR COPYRIGHT INFRINGEMENT, LATENT DEFECTS, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, WHETHER DIRECT, INDIRECT, EXEMPLARY OR

PUNITIVE, WHETHER OR NOT LESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. **LOCATION; USE AND OPERATION.** Lessee may operate and domicile the Equipment throughout the United States. Unless sublet in accordance with the provisions of Section 5 hereof, Lessee shall use the Equipment only in its possession and control and in the conduct of its business. Lessee shall comply with and cause the Equipment to comply with all legal requirements applicable thereto or to the use thereof and with all contracts (including insurance policies) and agreements to which Lessee is a party applicable thereto or to the ownership or use thereof. The operation, maintenance, repair, relocation, Alterations and surrender of the Equipment, any actions permitted to or required by Lessee hereunder, and all amounts payable with respect to the Equipment shall be at the sole risk and expense of Lessee and in accordance with the specifications of the manufacturer(s) of the Equipment (the "Manufacturer").

5. **SUBLEASE.** After notice to Lessor, and provided Lessee is not in default under Section 13 (a)(after any applicable cure period), Lessee may sublease the Equipment in whole or in part, to a United States for-profit corporation which is an end user of the Equipment ("Permitted Sublease") provided (i) the term of such sublease may extend to, but does not include, the Expiration Date; (ii) the sublease conforms in all respects to any legal, administrative, or other requirements set forth by any governmental authority having jurisdiction over the Equipment or such subleasing; and (iii) the sublessee acknowledges that the sublease is subject and subordinate to this Agreement and that such sublessee will return the Equipment to the Lessor hereunder upon notice that an Event of Default has occurred and is continuing under this Agreement. Notwithstanding any Permitted Sublease or any other Transfer, Lessee shall continue to be liable hereunder as primary obligor and not as a surety.

6. **MAINTENANCE; REPAIR.** Lessee will cause the Equipment to be maintained in good and efficient operating repair and condition, ordinary wear and tear excepted. Lessee shall maintain and operate the Equipment as prescribed and recommended by the Manufacturer. Upon surrender Lessee shall return to Lessor with each item, maintenance and repair records, and similar documents in the Lessee's possession or under its control. Any replacement parts (including any replacements made in connection with Alterations) shall be of equivalent or better quality than the original parts replaced and shall be consistent with the specifications of the Manufacturer.

7. **TITLING AND REGISTRATION.** Should certificates of title or registrations be required with respect to any Equipment, Lessee shall procure the same at its expense.

8. **ALTERATIONS.** Lessee shall not modify, reconfigure, alter, add-on, disable, or change the function of any item or part of the equipment; provided, Lessee may make Alterations to the Equipment. Any part, attachment, appurtenance or accessory which is essential to the operation of the Equipment, or which cannot be detached from the Equipment without materially interfering with the operation or value of the Equipment shall be part of the Equipment, with title thereto in Lessor.

9. **RISK OF LOSS; INSURANCE.**

(a) Lessee shall bear the risk of damage, loss, theft or destruction, partial or complete, foreseen and unforeseen of the Equipment. If the Equipment shall be lost, stolen, destroyed, damaged, or shall be condemned or requisitioned for a period exceeding its Expiration Date by any governmental authority (any such occurrence being called a Casualty and the item of Equipment so affected a Casualty Item), Lessee shall promptly and fully inform Lessor thereof in writing. Within 30 days after such Casualty, Lessee shall either repair the Casualty Item or substitute therefor equipment having at least equivalent value and utility, as reasonably determined by Lessor, or pay the Stipulated Loss Value thereof if provided in the Schedule for such item. Substitution shall be accomplished by Lessee providing to Lessor a bill of sale conveying good and marketable title to the substitute equipment, free and clear of all liens and such other documentation as Lessor shall reasonably require.

(b) Until the Equipment is surrendered to Lessor pursuant hereto, Lessee will maintain all risk insurance in at least the amount of the replacement cost of the Equipment and liability insurance on an occurrence basis (not claims made) in the amount of \$5,000,000, in every case (i) naming Lessor and its assignee(s) as loss payee and additional insured, (ii) requiring 30-day prior written notice to Lessor and its assignee(s) of cancellation by the insurance company, and (iii) such other risks (including without limitation environmental liability, whether

arising from negligence or strict liability), with such limits, deductibles, and endorsements as would prudently be carried by a commercially reasonable business in operations similar to those of Lessee, which are financed by national banks or other institutional lenders. With respect to any Schedule covering over-the-road tractor or trailer equipment liability insurance shall include general comprehensive and automobile liability coverage.

(c) Notwithstanding section 9(b), Lessee may self-insure the Equipment for both physical loss and liability for as long as Lessee enjoys from time to time a financial condition that is no worse than it was on the date of this Master Lease Agreement (which shall if Lessee is rated by commercial credit rating agencies be measured by the ratings of such agencies in a consistent manner, and if unrated, than by financial assets, income and other ratios also consistently applied).

10. SURRENDER OF EQUIPMENT; HOLDING OVER. Lessee shall surrender the Equipment to Lessor on the Expiration Date, immediately on request by Lessor if Lessee is in default or on such other date as may be applicable. The Equipment shall be surrendered to Lessor at the location of original acceptance by Lessee or other location as mutually agreed to by Lessor and Lessee. Lessor may inspect, and may bring prospective purchasers or bidders to inspect, the Equipment during normal business hours from time to time during the final one hundred twenty (120) days of each Schedule, in the event Lessee has not exercised an option (if any) to purchase the Equipment; provided, this sentence shall not diminish Lessor's general inspection rights set forth in Section 18. Upon such delivery to, inspection by, and written acceptance of Equipment by Lessor, risk of loss shall pass to Lessor and the Schedule shall terminate with respect to the Equipment so surrendered, except for any unfulfilled Lessee obligations hereunder. In the event that Lessee fails to surrender the Equipment in the condition required hereby on the Expiration Date, the Schedule shall continue, at Lessor's option, and Lessee shall pay rent in the amounts and at the intervals equivalent to the Basic Rent and Payment Dates in the period immediately prior to the Expiration Date.

11. TAXES; COMPLIANCE WITH LAW.

(a) Monetary Responsibility. Lessee shall have monetary responsibility hereunder for all Imposts and agrees to timely pay the same, and will hold Lessor harmless on an after-tax basis calculated in accordance with the applicable provisions of Section 16 from and against any such Impost. Lessee shall reimburse Lessor within thirty days of Lessor's written notice thereof (such notice to include appropriate verification or back-up, and if applicable, accompanied by a statement described in Section 16(d) and subject to any verification procedures described therein) for any Impost paid by Lessor. The two preceding sentences shall be applicable whether any payment, filing, return, or other paperwork relating to such Impost is made, formally or informally, or not made, by Lessee, Lessor, or any other person or entity, except as provided in Section 11(c). "Impost" shall mean (i) all taxes, assessments, levies, fees and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time prior to or during the Term, imposed or levied upon or assessed by any governmental authority of the United States or any subdivision thereof against (A) the Equipment, (B) any Basic Rent or other sum payable hereunder or (C) this Agreement or the leasehold interest created herein, or which arise in respect of the operation, possession or use of the Equipment; (ii) all sales, use, value added, rental, gross receipts taxes that are or are in the nature of sales, use or rental taxes or similar taxes (or any taxes that are in the nature of the foregoing) imposed or levied upon, assessed against or measured by any Basic Rent, or other sum payable hereunder; and (iii) except as caused by Lessor, all penalties and interest with respect to any item set forth in clause (i) or clause (ii) of this sentence for which the Lessee is responsible; provided, however, "Impost" shall not mean taxes (whether imposed by the United States or by any other domestic taxing authority) imposed on or measured by Lessor's net income (including any minimum or alternative minimum taxes) or net receipts, withholding taxes, accumulated earnings, personal holding company, excess profits, capital gains, capital, franchise or net worth taxes, taxes on or measured by any items of tax preference or gross receipts taxes other than taxes that are or are in the nature of sales, use or rental taxes and, in each case, any taxes which are in the nature of any of the foregoing or which are enacted in substitution for any of the foregoing and any penalties, interest and additions in respect thereto; and provided, further, however, that "Impost" shall not mean taxes resulting from or attributable to (i) (A) any voluntary transfer by Lessor of any interest in the Equipment, this Agreement or any Schedule other than upon and during the continuance of a Lessee default described in Section 13, (B) any voluntary transfer of any interest in Lessor or (C) any involuntary transfer of any of the foregoing interests in connection with any bankruptcy or similar proceeding for the relief of debtors in which Lessor is debtor; (ii) the breach of any covenant, representation or warranty of Lessor contained in this Agreement or any Schedule; (iii) the gross negligence or

willful misconduct of Lessor; (iv) any period or any act, event or circumstance occurring on or after the earlier of (A) the expiration or earlier termination of any Schedule or (B) the return of the Equipment to Lessor in the condition required by this Lease (provided such act, event or circumstance does not properly relate back to a time during the Lease Term); or (v) any unrelated business activity of Lessor in the jurisdiction imposing such Impost. Lessor shall pay to Lessee, on an after-tax basis, any tax savings resulting from any impost indemnified hereunder by Lessee or any event giving rise thereto.

(b) Filings; payments accompanying filings. Unless otherwise agreed in writing, in case any report or return is required to be filed with respect to any obligation of Lessee under this Section 11 or arising out of this Section 11, Lessee will timely make such report or return in such manner as will show the ownership of the Equipment in Lessor, or, where Lessee is not permitted by law to file, will notify Lessor of such requirement and make a proposed form of such report or return in such manner as shall be satisfactory to Lessor within a reasonable time prior to the time such report or return is to be filed by Lessor. Notwithstanding the foregoing, unless Lessee shall have provided Lessor with a valid direct pay permit, or other valid authorization from the relevant taxing authority, any return including Imposts which are in the nature of or are sales, use, rental, or value-added taxes will be filed by Lessor, who shall be reimbursed for the payment of such Imposts to the extent Lessee is liable under this Section 11 (such liability being subject to the contest provisions of Section 11(e)).

(c) Information; contest. Lessee shall provide Lessor with (i) any information Lessor may reasonably request in writing to enable Lessor to fulfill any tax filing obligations provided, that such information is reasonably available to Lessee and with (ii) copies of all filed documents (including, with respect to ad valorem, property or similar taxes, any rendition, similar document, or request for revaluation of assessment) and evidences of payment with respect to any filings or payments made by Lessee, in each case regarding the Equipment or this Agreement. Lessor shall provide Lessee with information reasonably available to Lessor as Lessee may reasonably request in writing to enable Lessee to fulfill any tax filing obligations with respect to Imposts for which Lessee is liable under this Section 11. If any Impost may legally be paid in installments, Lessee may pay same in installments; provided, any Impost assessed, levied or imposed during the Term shall be paid in full by Lessee prior to the Expiration Date. Lessee shall not be required to pay or discharge any claim or demand referred to in this Section imposed in the name of Lessee, so long as the validity, applicability or the amount thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner except that Lessee shall take all steps necessary to avoid the forfeiture, order of attachment, foreclosure, seizure, confiscation or sale of the Equipment. If Lessor shall receive any refund of or credit with respect to any Imposts indemnified by Lessee under this Section 11, Lessor shall pay such refund or credit to Lessee, together with any interest received by Lessor that is fairly attributable to such refund or credit.

(d) Ownership. Except as stated in any Schedule, all tax benefits, deductions or credits arising out of ownership of the Equipment are and shall remain vested in Lessor.

(e) Other Contests.

(i) Lessee may require Lessor to contest an Impost indemnified by Lessee under this Section 11 which is imposed or assessed against Lessor rather than Lessee ("claim"), if the following conditions are met: (1) Lessee requests in writing that such claim be contested; (2) before the earlier of (A) the commencement of an administrative appeal or (B) the date of filing of any petition or complaint with a court, Lessee shall have acknowledged in writing its obligation to indemnify Lessor in the event the contest is unsuccessful (in whole or in part), provided, however, that such acknowledgment shall not preclude Lessee from raising a defense to liability hereunder if a court of competent and proper jurisdiction has rendered a decision that the cause of such claim is not one for which Lessee is responsible to pay an indemnity to Lessor hereunder; (3) Lessee shall have agreed to pay to Lessor on demand an amount which, on an after-tax basis, shall be equal to all reasonable costs and expenses that Lessor may incur in connection with contesting such claim (including, without limitation, reasonable legal and accounting fees and disbursements, it being also agreed that required out-of-pocket costs for filing fees, copying, hand or courier delivery, printing if required by the court, and similar expenses are reasonable in the amounts so required); (4) Lessee shall not be in default as defined in Section 13(a) (after all applicable cure periods); (5) the claim plus the amount of all similar and logically related claims with respect to the transactions contemplated by this Agreement that have been or could be raised in an audit of Lessor by the taxing authority in question for any other taxable year of Lessor (including any future taxable period) with respect to which an assessment of a tax deficiency

is not barred by the statute of limitations for normal (as opposed to fraudulent) assessments exceeds \$50,000; (6) Lessee delivers to Lessor an opinion of independent tax counsel chosen by Lessee and reasonably satisfactory to Lessor; that there is a reasonable basis for contesting such claim, (7) such contest shall not subject the Equipment to forfeiture, order of attachment, foreclosure, seizure, confiscation or sale; and (8) as to either (I) an appeal of a previously unsuccessful claim, or (II) the initiation of a contest the subject matter of which has previously been decided by a court of competent jurisdiction under this section unless there shall have been a change in fact or law, (including without limitation, amendments to or adoption of statutes or regulation, administrative rulings and court decisions) enacted, promulgated or decided after such claim shall have been so previously decided, then, in either case, Lessor shall have received an opinion of counsel selected by Lessee and reasonably satisfactory to Lessor, there is substantial authority for the Lessor to prevail in the appeal or contest of such claim.

(ii) Lessor shall not be obligated to appeal an adverse determination by any lower court more than once and in no case shall Lessor be required to appeal to the Supreme Court of the United States. If Lessor determines to contest such claim by paying it and suing for a refund, Lessee shall pay to Lessor an amount on an after-tax basis equal to the sum of any tax, interest, penalties and additions to tax which are paid by Lessor in connection with contest and suit, at the time such amounts are paid by Lessor. To the extent that Lessor shall receive a refund of any amounts paid by it in respect of which it shall have been paid the amount required pursuant to the immediately preceding sentence, Lessor shall pay to Lessee on an after-tax basis the amount of such refund, together with any interest received by it on such refunded amount and attributable costs (other than costs of Lessor that have not been reimbursed by Lessee). Lessor will keep Lessee informed regarding such contest and Lessee, through its counsel or accountants, shall have the right to review document submissions, to make suggestions, to be present at meetings, and to consult in good faith with Lessor with regard to any administrative or judicial proceedings, but Lessor shall have sole control over the conduct of any such proceedings. Lessor shall not enter into a settlement or other compromise with respect to such claim without the written consent of Lessee, unless Lessor has waived its rights to indemnification hereunder with respect to such claim or any other claim hereunder that would be materially prejudiced by such settlement and pays Lessee, without interest, any amount (excluding Lessor's out of pocket attorneys', accountants', filing, or similar expenses) previously paid or advanced by Lessee pursuant to this section (by way of indemnification or advance for payment of an Impost) with respect to such Imposts.

(iii) If any claim is made against Lessor, by commencement of proceedings against Lessor, by formal written demand or assessment, or otherwise (excepting routine invoices or statements), for an Impost for which Lessee may have an indemnification or reimbursement obligation pursuant to this Section 11, Lessor shall, as soon as reasonably practical, notify Lessee of such claim in writing and shall not take any action with respect to such claim or proceeding or Impost without consent of Lessee for 25 days unless otherwise required by law (in which case, Lessor shall so inform Lessee in such notice); provided, however, that Lessor's failure to provide such notice shall not reduce Lessee's obligations under this Section 11 except to the extent that such failure materially prejudices Lessee's ability to pursue its contest rights hereunder.

12. INDEMNIFICATION. Lessee agrees to pay, and shall protect, indemnify, defend and save harmless Lessor and every assignee of Lessor on an after-tax basis calculated in accordance with Section 16(c)(ii) from and against all liability, losses, damages, costs, expenses (including reasonable attorneys fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from (i) injury to or death of any person, or damage to or loss of property, from the ownership, management, control, use, possession, operation, environmental, hazardous waste or pollution, storage, leasing, subleasing of, relocations of, or any defect in, the Equipment (latent or otherwise, discoverable or otherwise, or asserted under any "strict liability" theory or otherwise), (ii) any breach of this Agreement, and (iii) any damage to the premises wherein the Equipment may be located caused by the installation, use or removal thereof; provided, however, Lessee shall not be required to indemnify any person for (A) matters accruing solely prior to the time when Lessee has possession or control of the Equipment or after the time when risk of loss has passed to Lessor, (B) any claim resulting from acts which would constitute gross negligence or willful misconduct of, or breach of any representation, warranty or covenant by such person, (C) any claim resulting from a voluntary transfer of Equipment by Lessor, (D) any claim with respect to tax benefits except as otherwise provided herein, and (E) any claim resulting from a lien arising by, through or under Lessor (unless caused by Lessee's default). The foregoing indemnification shall commence immediately, and shall continue in full force and effect notwithstanding the termination, cancellation, or expiration hereof. "Equipment," as used in this Section 12, includes equipment which has not been formally accepted in writing by Lessee under a Schedule, it

being intended that this Section shall apply to any equipment owned by Lessor and used by Lessee regardless of the formal documentation thereof. The foregoing indemnification is not for the benefit of any Manufacturer and Lessee retains all rights against each Manufacturer.

13. EVENTS OF DEFAULT; REMEDIES.

(a) Lessee shall be in default: (i) if Lessee shall fail to pay any monies due hereunder by the earlier of (A) ten days after the due date thereof or (B) five days after written notice; (ii) if proceedings are instituted by Lessee, or after 60 days if proceedings are instituted against Lessee and not terminated during such time, in each case: under any provision of Title 11 of the United States Code, insolvency laws or similar laws relating to the relief of debtors, or if Lessee makes an assignment for the benefit of creditors, or if a receiver, trustee or custodian or similar official for Lessee or for all or any substantial part of its assets shall be appointed; (iii) if, other than as to the matters set forth in clauses (i), (ii), and (iv) of this section 13(a), Lessee fails to pay, perform or observe any term, covenant or condition hereof within ninety (90) days after written notice from Lessor; or (iv) if Lessee makes or suffers a Transfer of this Agreement or any Rent, Schedule or the Equipment other than a Permitted Transfer. Lessee acknowledges that its continued possessory interest hereunder is material to the Lessor and that any cessation of possession or use by a third party will substantially impair the value of a Schedule to Lessor.

(b) Upon the occurrence of a Lessee default as defined in Section 13(a), Lessor shall have all remedies provided by applicable law (including all remedies under section 2A-523(1) of the Uniform Commercial Code), and additionally may: (i) take possession of the Equipment wherever found, and for this purpose enter upon any premises of Lessee and remove the Equipment without any liability to Lessee, or, rather than take possession of the Equipment, render any and all of the Equipment unusable without removing it from the premises, again without liability to Lessee; or (ii) sell or lease the Equipment or any part thereof at public auction or private sale or lease at such time or times upon such terms as Lessor may determine, free and clear of any rights of Lessee, and if notice thereof is required by law, any notice in writing of any such sale or sales by Lessor to Lessee not less than 5 days prior to the date thereof shall constitute reasonable notice thereof. None of the remedies hereunder is deemed to be exclusive, but each shall be cumulative and in addition to any other remedies referred to herein or otherwise available to Lessor in law and equity. The repossession or subsequent sale or lease by Lessor of any item of Equipment shall not bar an action for deficiency as herein provided and the bringing of an action or the entry of judgment against the Lessee shall not bar the Lessor's rights to repossess any or all items of Equipment. In computing any Lessor damages hereunder, the present value of unpaid rentals due hereunder shall be determined at six percent per annum, and the present value of a new lease or market rent shall be determined using commercial discounting rates current at the time of such determination.

(c) Lessor shall be entitled to recover immediately, as liquidated damages for unpaid rent and not as a penalty, a sum equal to the aggregate of the following: (i) All rentals or other sums due and owing for any item of Equipment up to the date of re-delivery to or repossession by Lessor; (ii) Any expenses and losses incurred by Lessor in connection with the repossession, holding, repair, subsequent sale or lease, or disposition of the Equipment, including reasonable attorney's fees if collected by law or through an attorney at law or upon advice therefrom; (iii) The Stipulated Loss Value for any item of Equipment which Lessee fails to return to Lessor as provided above, or converts or destroys or which Lessor is unable to repossess; and (iv) The Stipulated Loss Value for any item of Equipment returned to Lessor less (A) the present value of the proceeds of reletting the Equipment for the remaining term of the Agreement or (B) if the Equipment is sold, the net proceeds of such sale. Any re-lease will be at sole discretion of the Lessor.

(d) Notwithstanding clauses (b) and (c) above, upon the occurrence of a default as defined in section 13(a)(iii), if the term, covenant or condition is not material, Lessor shall be entitled to damages at law and to specific performance of the term, covenant or condition involved (and to its court, and reasonable attorneys' fees and expenses) but may not cancel this Agreement, repossess the Equipment, accelerate future rents, or obtain any other remedy, it being understood that this clause (d) does not relate to the defaults specified in clauses (i), (ii) or (iv) of section 13(a) and that Lessee's obligations to operate and domicile the Equipment only in the United States, to maintain the Equipment in accordance with section 6, and to provide insurance if required under section 9, are material.

14. **SEPARABILITY; BINDING EFFECT.** Each provision hereof shall be independent and the breach of any provision by Lessor shall not discharge or relieve Lessee from its obligations to perform each and every covenant to be performed by Lessee hereunder. If any provision hereof or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. All provisions hereof shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign were named as a party hereto. Lessee agrees that any time, and from time to time, after the execution and delivery of this Agreement, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order to fully effect the purposes of this Agreement, including but not limited to, providing information or documents relating to the status, location and use of the Equipment and executing such UCC-1 lease notification statements as Lessor may reasonably request in order to perfect Lessor's rights hereunder.

sell the Equipment
15. **QUIET ENJOYMENT; LESSEE'S REMEDIES.** So long as no Lessee default as defined in Section 13(a) has occurred and is continuing, neither Lessor nor any party claiming by, through or under Lessor shall interfere with the possession, use and quiet enjoyment of the Equipment by the Lessee or a permitted sublessee during the Term applicable to such Equipment. Lessor may sell the Equipment and/or assign the Schedule and all sums due hereunder, in whole or in part, at any time and from time to time, in its sole discretion; provided, Lessor shall not assign any Schedule unless such assignee is one of the persons listed on Schedule A or is approved by Lessee. Lessee agrees to cooperate with Lessor in respect thereto and to furnish such documents as may be reasonably requested by Lessor or its assignee(s) including, but not limited to, opinions of counsel, acknowledgments of assignment, and certificates of incumbency and authority. Without limiting the preceding sentence, Lessee approves and agrees to the forms of documents attached as Exhibits B-1, B-2 and B-3 hereto. *Lessor and* Lessee agrees that any Lessor assignment is not a delegation of a material performance unless and until Lessee's quiet possession and enjoyment is actually disturbed by a third party lawfully claiming by, through or under Lessor. Lessee's sole and exclusive remedy with respect to any claim against Lessor shall be to institute an independent action at law against Lessor for such alleged claim. Damages with respect to any such claim shall be limited to proximate and direct damages. LESSEE WAIVES SPECIFIC PERFORMANCE, REPLEVIN, ADEQUATE ASSURANCE OF PERFORMANCE, THE RIGHT TO DEDUCT OR OFFSET DAMAGES FROM CURRENT AMOUNTS DUE, AND INTERFERENCE BASED ON PATENT OR COPYRIGHT. Upon the sale or absolute assignment of any Schedule hereunder, unless expressly reserved all rights of Lessor shall pass to the assignee and no such right shall remain vested in Lessor by reason of being characterized as both "personal" or otherwise. No collateral assignee shall be liable to perform any covenant of Lessor. The provisions of this Section are made expressly for the benefit of Lessor and any assignee of Lessor.

16. **INCOME TAX INDEMNITY-LESSEE'S ACTS OR OMISSIONS.**

(a) Indemnity. In entering into this Agreement, Lessor has assumed that it is entitled to depreciation deductions for Federal and State income tax purposes under the most accelerated method, over the shortest depreciable life (recovery period) allowed, and based upon 100% of the Lessor's Cost of the Equipment (the "Depreciation Deduction"), in the case of such Federal deductions as described in the Internal Revenue Code of 1986, as amended (the "Code"). If, (i) as a result of an act, omission or election (including without limitation, substitution, replacement, termination or the exercise of any option hereunder, but excluding the negotiation and delivery of this Agreement or any Schedule and any act or omission required by this Agreement or any Schedule not enumerated earlier in this parenthetical) of Lessee or any sublessee, assignee, or other lawful user of the Equipment, or the incorrectness of any warranty or representation by Lessee herein, Lessor, in determining its Federal income tax liability for any taxable year, shall lose, shall not have, shall lose the right to claim, or shall suffer a disallowance or recapture of, or delay in claiming, all or any portion of the Depreciation Deduction or if, (ii) for Federal Income tax purposes, any item of income, loss or deduction with respect to the Equipment is treated as derived from sources outside the United States, or if (iii) there shall be included in Lessor's gross income for Federal income tax purposes any amount on account of any addition, modification or improvement to or in respect of the Equipment (other than any amounts to the extent offset by deductions, in the taxable quarter of Lessor in which such amounts are included in income, that would not otherwise have been allowable but for such inclusion in gross income) (an "Inclusion") (the matters stated in clauses (i) (ii) and (iii) being referred to a "Tax Loss"), Lessee shall pay to Lessor as an indemnity an amount calculated in accordance with the applicable provisions of this Section 16 which, after

deduction of all taxes required to be paid by Lessor as a result of Lessor's receipt of such payment, will maintain Lessor's net after-tax economic yield in respect of the Equipment at the same level that would have been available if such Tax Loss had not occurred, plus penalties and interest payable in connection with such Tax Loss (and Lessor shall pay to Lessee, on an after-tax basis, from time to time, any tax savings resulting from such tax loss or the event giving rise thereto). If the Tax Loss relates to past or present returns (including returns of estimated tax), or to a presently payable lump sum amount (such as after a final determination of a contest), then such indemnity will be paid as a lump sum within thirty (30) days of demand (or sooner if required by the taxing authority); if the Tax Loss relates to future periods or returns, then such indemnity shall be computed and paid as a rent adjustment (in which case Stipulated Loss Values in the affected Schedule shall also be recomputed). Notice of such Tax Loss, copies of relevant underlying documentation, and an explanation of the appropriate indemnity shall be sent from an individual who has knowledge of such matters, such as Lessor's in-house Tax Manager.

(b) Timing of Tax Loss. A Tax Loss shall be deemed to occur upon the earlier of (i) the filing of any tax return, including any statement of estimated tax, in which Lessor is required (or deemed required) to take such Tax Loss into account, or (ii) if such Tax Loss is contested as provided for below, the date of a final determination by a court of competent jurisdiction that a Tax Loss has occurred.

(c) Calculation of Indemnity. (i) All calculations of Lessor's net after-tax economic yield with respect to a Tax Loss under this Section shall be determined using the highest Federal corporate income tax rate and the highest state and local corporate income tax rates imposed on Lessor, in each case effective on the Commencement Date of each Schedule, (ii) All calculations regarding the amount of any additional taxes payable by Lessor as a result of Lessor's receipt of any payment hereunder, or of any Inclusion will be determined on the basis of the assumptions that Lessor will be subject to the highest Federal corporate income tax rate and the highest state and local corporate income tax rates imposed on Lessor, in each case effective on the date of such payment, and for the purposes of both clause (i) and clause (ii) of this Section 16 (c) that state or local adjustments shall mirror Federal adjustments.

(d) Representation. Lessee represents and warrants that, for Federal income tax purposes, Lessee is not the owner of the Equipment and will not assert tax, accounting or legal positions indicating or implying such ownership.

(e) Contest of Disallowance of Tax Benefits.

(i) If the Internal Revenue Service formally proposes in writing an adjustment in the income taxes of Lessor which, if accepted by Lessor, would constitute a Tax Loss with respect to which Lessee would be required to indemnify Lessor pursuant to this Section 16 (a "Disallowance"), then Lessor shall give prompt written notice of such proposal to Lessee; provided, however, that Lessor's failure to provide such notice shall not reduce Lessee's obligations under this Section 16 except to the extent that such failure materially prejudices Lessee's ability to pursue its contest rights hereunder and Lessor agrees not to take any action with respect to the claim by Lessee of written notice of the claim by Lessor (unless otherwise required by law in which case, Lessor shall so inform Lessee in such notice). Lessor agrees to contest any Disallowance if (1) within 25 days after notice by Lessor to Lessee of such Disallowance, Lessee requests in writing that such claim be contested; (2) before the earlier of (A) the commencement of an administrative appeal or (B) the date of filing of any petition or complaint with a court, Lessee shall have acknowledged in writing its obligation to indemnify Lessor in the event the contest is unsuccessful (in whole or in part), provided, however, that such acknowledgment shall not preclude Lessee from raising a defense to liability hereunder if a court of competent and proper jurisdiction has rendered a decision that the cause of such claim is not one for which Lessee is responsible to pay an indemnity to Lessor hereunder; (3) Lessee shall have agreed to pay to Lessor on demand an amount which, on an after-tax basis, shall be equal to all reasonable costs and expenses that Lessor may incur in connection with contesting such claim (including, without limitation, reasonable legal and accounting fees and disbursements, it being also agreed that required out-of-pocket costs for filing fees, copying, hand or courier delivery, printing if required by the court, and similar expenses are reasonable in the amounts so required); (4) Lessee shall not be in default as defined in Section 13(a) (after all applicable cure periods); (5) the claim plus the amount of all similar and logically related claims with respect to the transactions contemplated by this Agreement that have been or could be raised in an audit of Lessor by the taxing authority in question for any other taxable year of Lessor (including any future taxable period) with respect to which an assessment of a tax deficiency is not barred by the statute of limitations for normal (as opposed to fraudulent) assessments exceeds \$150,000; (6) Lessee delivers to Lessor an opinion of independent tax counsel chosen by

Lessee and reasonably satisfactory to Lessor; that there is a reasonable basis for contesting such claim, (7) such contest shall not subject the Equipment to forfeiture, order of attachment, foreclosure, seizure, confiscation or sale; and (8) as to either (I) an appeal of a previously unsuccessful claim, or (II) the initiation of a contest the subject matter of which has previously been decided by a court of competent jurisdiction under this section unless there shall have been a change in fact or law, (including without limitation, amendments to or adoption of statutes or regulation, administrative rulings and court decisions) enacted, promulgated or decided after such claim shall have been so previously decided, then, in either case, Lessor shall have received an opinion of counsel selected by Lessee and reasonably satisfactory to Lessor, there is substantial authority for the Lessor to prevail in the appeal or contest of such claim.

(ii) Lessor shall not be obligated to appeal an adverse determination by any lower court more than once and in no case shall Lessor be required to appeal to the Supreme Court of the United States. Lessor in its sole discretion may forego, after good faith consultation with Lessee, any and all administrative appeals, proceedings, hearings, and conferences with the Internal Revenue Service with respect to such Disallowance. If Lessor determines to contest such Disallowance by paying the additional tax and suing for a refund, Lessee shall pay to Lessor an amount on an after-tax basis equal to the sum of any tax, interest, penalties and additions to tax which are required to be paid by Lessor in connection with contesting such Disallowance via a suit for refund, at the time such amounts are paid by Lessor. To the extent that Lessor shall receive a refund of any amounts paid by it in respect of which it shall have been paid the amount required pursuant to the immediately preceding sentence, Lessor shall pay to Lessee on an after-tax basis the amount of such refund, together with any interest received by it on such refunded amount and attributable costs (other than costs of Lessor that have not been reimbursed by Lessee). Lessor will keep Lessee informed regarding such contest and Lessee, through its counsel or accountants, shall have the right to review document submissions, to make suggestions, to be present at meetings, and to consult in good faith with Lessor with regard to any administrative or judicial proceedings, but Lessor shall have sole control over the conduct of any such proceedings. Lessor shall not enter into a settlement or other compromise with respect to such Disallowance without the written consent of Lessee, unless Lessor has waived its rights to indemnification hereunder with respect to such claim or any other claim hereunder that would be materially prejudiced by such settlement and pays Lessee, without interest, any amount (excluding Lessor's out of pocket attorneys', accountants', filing, or similar expenses) previously paid or advanced by Lessee pursuant to this section (by way of indemnification or advance, and including any interest received from third parties which interest is attributable thereto). Lessor in its sole discretion may waive the indemnity set forth in this Section 16 applicable to the Tax Loss resulting from such Disallowance and refrain from contesting or continuing to contest such Disallowance and, in that event, Lessor agrees to pay Lessee, without interest, any amount (excluding Lessor's out of pocket attorney's, accountants', filing, or similar expenses) previously paid or advanced by Lessee pursuant to this section (by way of indemnification or advance, and including any interest received from third parties which interest is attributable thereto).

(f) Exclusions. Lessee shall not be liable for the indemnity set forth in Section 16(a) with respect to any Tax Loss resulting from (i) an event or circumstance described in clauses (i) through (v) of the second proviso in the last sentence of Section 11(a); (ii) any event or circumstance whereby Lessee is required to pay Stipulated Loss Value; (iii) any amendment to or change after the date of execution of each Schedule in applicable law, including without limitation, the Code, regulations, administrative pronouncements, executive orders or judicial decisions; (iv) failure of Lessor to claim the Depreciation Deduction in a proper and timely manner; (v) the application of Sections 55-59 [alternative minimum tax], 168(d)(3) [mid-quarter convention], 465 [at risk], 467 (except if required by Lessee's request to modify or adjust the schedule of Basic Rent, [level accrual], 469 [passive activity], 501 (except if applicable to Lessee, any sublessee or other person using the Equipment through Lessee) [exempt organizations], 851 [investment companies], or 861 (except if such income characterization arises from the location of the Equipment or the status of the Lessee, any sublessee or other person using the Equipment or paying therefor through Lessee) [foreign source income] of the Code or any comparable provisions of state or local income tax laws; (vi) any failure of Lessor to take any action required of it under this Section 16 if such failure materially prejudices Lessee; (vii) the inability of Lessor to include in its basis all or any part of Lessor's Cost unless such inability results from any inaccuracy or breach of the representations and warranties of Lessee; (viii) a determination that the Equipment is not being held by Lessor for use in a trade or business or for the production of income, or (ix) any amendment or modification of this Agreement or any Schedule not consented to in writing by Lessee.

(g) Computations. All computations under Sections 11 and 16 shall describe in reasonable detail the basis therefor and shall be delivered in writing. Either party shall have the right to have such computations verified by a firm of independent mutually acceptable nationally recognized certified public accountants. The cost of such verification shall be divided equally between Lessor and Lessee. The parties agree that the sole responsibility of any such verifier shall be to verify the amount of any payment hereunder and that matters of interpretation of this Agreement or any Schedule are not within such verifier's responsibilities.

17. **DEFINITIONS.** The phrases used in the text in parentheses and each of the following definitions apply throughout this Agreement. "Alterations" are modifications, alterations or additions to the Equipment, provided each either (A) is required by governmental authority to use or operate the equipment, or (B) (i) is not inconsistent with the Manufacturer's requirements for warranty, (ii) is necessary or desirable for the maintenance, operation or improvement of the Equipment, and (iii) does not reduce the value or impair the capabilities or efficiency of the Equipment. "Equipment" refers to the items named on each Schedule, all attachments and accessions now and hereafter made thereon, and all substitutions and replacements therefor. Any separately identifiable item leased hereunder is referred to as Equipment and references to "Equipment" mean all the Equipment and each item of Equipment. "Hereunder," "under this Agreement," or similar phraseology means pursuant to the terms of this instrument together with the applicable Schedule now or hereafter outstanding at any time and from time to time. "Lessor's Cost" means the total amount paid by Lessor or any assignee to purchase the Equipment, including without limitation amounts paid to vendors, liabilities assumed with or without recourse, taxes, fees and charges if applicable, and all other direct out of pocket expenses related to the acquisition of any particular item(s) of Equipment; provided, changes or modifications to original equipment specifications may be separately charged to Lessee and if so shall be reimbursed to Lessor as an expense. "Lessee" includes any corporation succeeding the named Lessee by consolidation, merger or acquisition of its assets substantially as an entity. "Permitted Transfer" means a Permitted Sublease as set forth in Section 5, and any other Transfer (except a Transfer of Rent) which is being contested by Lessee in good faith and by appropriate legal proceedings in a reasonable manner, provided Lessee shall be taking all steps necessary to avoid the forfeiture, foreclosure, seizure, confiscation or sale of the subject of such Transfer. "Transfer" means any Permitted Transfer and the existence of any lien, encumbrance, security interest, assignment, sale, or sublease, on or of this Agreement, any Schedule, any Rent, or the Equipment, in each case by or through Lessee. "Stipulated Loss Value" for an item of Equipment means the amount determined by multiplying the Lessor's cost for such item by the percentage specified on the applicable Schedule opposite the Payment Date for Basic Rent then due. "Written" notice or approval includes telegraph, telex, mailgram and facsimile or telecopy.

18. **MISCELLANEOUS.** If provided by Lessor, Lessee will affix a decal to the Equipment. This Agreement or a copy hereof may be filed by Lessor as a lease notification statement under any applicable Uniform Commercial Code ("UCC"). Lessor may execute UCC lease notification statements on behalf of Lessee and may file same in appropriate offices determined under the UCC (provided such statements shall relate only to notice of lease of the Equipment hereunder). Lessee shall reimburse Lessor for all UCC and other searches, filings, and similar out-of-pocket costs up to \$500 per Schedule. This is a contract of lease only and nothing herein shall give Lessee any interest in the Equipment other than its leasehold as specifically set forth herein. Lessor may refer to Lessee as a customer in any generic list thereof. Lessee agrees that from time to time Lessor (or its authorized representatives) may inspect the Equipment during normal business hours upon reasonable notice. Lessee agrees to provide Lessor, within ten days of their required filing dates, copies of all reports filed by Philip Morris Companies, Inc. ("PMCI") with the United States Securities and Exchange Commission; and, if PMCI ceases to be required or fails to file such reports, or if such reports do not break out financial information relating to Lessee in a form reasonably satisfactory to Lessor (it being agreed that the SEC Form 10Q of PMCI relating to the quarter ended June 30, 1995 is reasonably satisfactory), Lessee will provide Lessor, and Lessor will maintain in a confidential manner, quarterly and annual financial reports prepared in accordance with generally accepted accounting principles consistently applied, which in the case of annual reports will be audited by independent public accountants and provided within ninety days of the close of Lessee's fiscal year, and in the case of quarterly reports will be certified by the chief financial officer of Lessee and provided within sixty days of the end of each of Lessee's quarters (other than at fiscal year end). If Lessee fails to comply with its covenants herein, the Lessor may but shall not be obligated to make advances to perform the same. All sums so advanced and all sums not paid when due hereunder shall be payable to the Lessor upon demand with interest so far as lawful at two hundred basis points higher than the rate at which Lessee could borrow unsecured for thirty days (appropriately annualized) in the commercial marketplace at the time the

computation is made, or at the highest maximum rate permitted by law, whichever is less.

19. **GOVERNING LAW; CAPTIONS.** This Agreement shall be governed by the laws of the State of Georgia. The captions of the Sections have been inserted for convenience only and are not to be used in the interpretation of the Agreement.

20. **EXHIBITS.** Exhibits A, B-1, B-2, and B-3 attached to this Agreement are incorporated herein by this reference.

21. **NO AMENDMENTS EXCEPT IN WRITING.**

The Lease and each Schedule constitute the entire agreement between Lessor and Lessee and no provision therein may be amended, modified or waived except in writing signed by Lessor and Lessee, and any such waiver shall be effective only in the specific instance and for the specific purpose given.

LESSEE SIGNATURE: 

LEASE PLAN U.S.A., INC.
(Lessor)

PHILIP MORRIS INCORPORATED
(Lessee)

By: 

By: 

Title: President

Title: _____

[corporate seal]

[corporate seal]

State of New York

County of New York, SS:

On this 8th day of December 1995, before me personally appeared Robert Mikulay to me personally known, who being by me duly sworn, says that (s)he is the V.P. of Philip Morris Incorporated, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL of Notary]

By: 

My Commission expires:

KATHLEEN M. MULLIGAN
Notary Public, State of New York
Qualified in Suffolk County
Certificate Filed in New York County
Reg. #4883282 Expires Jan. 20, 1997

State of Georgia County of Fulton, SS:

On this 9th day of ~~October~~ December 1995, before me personally appeared Donald F. Kreft, to me personally known, who being by me duly sworn, says that he is the President of Lease Plan U.S.A., Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL of Notary]

By:

Wanda E. Jackson
My Commission expires:Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 19, 1998

Exhibits:

- A: pre-approved assignees
- B-1: form of Lessee's Counsel's opinion
- B-2: form of rent assignment letter
- B-3: form of UCC-1

EXHIBIT 2 TO NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE

LEASE SCHEDULE

SCHEDULE

Schedule: 95-1
to Master Lease Agreement dated October 16, 1995,

Dated: October 16, 1995
Control No. 40043.

This Schedule is entered into between Lease Plan U.S.A., Inc., Lessor, and Philip Morris Incorporated, Lessee. Capitalized words herein have the meaning defined in the Master Lease Agreement referred to above, which is incorporated herein in its entirety by this reference as if set forth in full. The intention of the parties is to create a lease between themselves for the equipment described herein (the "Equipment") on conditions set forth herein and in the referenced Master Lease Agreement.

EQUIPMENT DESCRIPTION

<u>No. Items</u>	<u>Manufacturer</u>	<u>Equipment</u>	<u>Lessor's Cost</u>
Two (2)	General Motors	1996 Electro-Motive F59PHI locomotives	As stated on Lessee's Certificate of Acceptance

RENT AND PAYMENT DATES

Commencement Date: Date of Lessee's Certificate of Acceptance

Expiration Date: The 24th of the month after the month on which the 60th
Payment of Basic Rent is made.

First Rent Date: The twenty-fifth day of the month following the month in which
the last Commencement Date occurs.

Basic Rent: On each Payment Date, for each item of Equipment, an amount
equal to Lessor's Cost multiplied by 1.6192%; plus, on the First
Rent Date, a pro rata amount of the initial Basic Rent for the
number of days from and including the Commencement Date to
the First Rent Date.

Payment Dates: Twenty-fifth day of each month, beginning with the First Rent Date as the first and continuing thereafter until all payments have been made.

Adjustment of Rents: The Basic Rent set forth above has been based on Lessor's cost of financing ("Financing Rate") for this Schedule at a rate based on three year Government Bonds and Notes, at 7.28%. Should the actual Financing Rate, on the earlier of debt placement or the last day of the calendar quarter following the quarter in which the First Rent Date occurs, be different (either up or down), the Basic Rent percentage shall be adjusted accordingly; for every full increase/decrease in the Financing Rate by twenty-five (25) basis points (0.0025), the Basic Rent percentage shall be increased/decreased by .0001. Lessor will provide Lessee with said adjustment of Basic Rent by letter, including adjustment of any other computations based on Basic Rent (for example, Stipulated Loss Values).

Delivery Location and Principal Permanent Location will be stated on Lessee's Certificate of Acceptance.

In addition to the filing and UCC fees reimbursable from Lessee to Lessor under section 18 of the Master Lease Agreement, Lessee will pay the out-of-pocket filing fee for recording a Memorandum of Lease with the Interstate Commerce Commission, for this Schedule.

LESSEE'S RIGHT TO EXTEND

Lessee may extend this Schedule in whole but not in part for up to five periods of one year each (each period being called a "Renewal Term"). Basic Rent during a Renewal Term shall be fair market rental value. Lessee shall exercise its option to renew by giving Lessor written notice not less than 180 days but not more than 270 days prior to the Expiration Date or the expiration date of the first four Renewal Terms, as the case may be, including the amount which Lessee feels is fair market rental value. If Lessor and Lessee do not agree, in writing, as to such fair market rental value prior to the 90th day prior to the effective date of such Renewal Term, then each shall appoint an appraiser, and the two so appointed shall appoint a third appraiser. The arithmetic average of the three appraisals of fair market rental value shall be binding upon Lessor and Lessee, who shall equally share the costs of such appraisals. If Lessee does not exercise this option as specified above, it shall automatically lapse and be of no further effect. This option (i) may be exercised by Lessee if Lessee is in default under section 13 but the time of exercise falls within a cure period, (ii) may be exercised if an event has occurred and is continuing which with notice or lapse of time or both, would be an event of default under section 13, but (iii) shall not be effective or valid if on the initial or any subsequent Expiration Date there exists (A) any Lessee default under section 13 which has not been cured (even if the nominal cure period extends beyond such date) or (B) any event has occurred and is continuing on such date which with notice or lapse of time or both, would be a default under section 13, whether or not curable.

LESSEE'S RIGHT TO PURCHASE

Lessee may purchase all, but not less than all, the Equipment under a particular Schedule for fair market value on the Expiration Date or on the expiration date of any Renewal Term. Lessee shall exercise this option by giving Lessor written notice not less than 180 days but not more than 270 days prior to the Expiration Date or the expiration date of the first four Renewal Terms, as the case may be, including the amount which Lessee feels is fair market value. If Lessor and Lessee do not agree, in writing, as to such fair market value prior to the 90th day prior to the Expiration Date or the expiration date of the then-current Renewal Term, as the case may be, then each shall appoint an appraiser, and the two so appointed shall appoint a third appraiser. The arithmetic average of the three appraisals of fair market value shall be binding upon Lessor and Lessee, who shall equally share the costs of such appraisals. Lessee shall pay the purchase price in immediately available federal funds on the day appointed, and Lessor shall concurrently deliver to Lessee a bill of sale for the Equipment purchased, on an "AS IS WHERE IS" basis, free and clear of all liens arising by, through or under Lessor. If Lessee does not exercise this option as specified above, it shall automatically lapse and be of no further effect. This option (i) may be exercised by Lessee if Lessee is in default under section 13 but the time of exercise falls within a cure period, (ii) may be exercised if an event has occurred and is continuing which with notice or lapse of time or both, would be an event of default under section 13, but (iii) shall not be effective or valid if on the initial or any subsequent Expiration Date there exists (A) any Lessee default under section 13 which has not been cured (even if the nominal cure period extends beyond such date) or (B) any event has occurred and is continuing on such date which with notice or lapse of time or both, would be a default under section 13, whether or not curable.

LESSEE'S RIGHT TO TERMINATE

Lessee may terminate this Schedule, in whole or in part, on the 24th, 30th, 36th, or 48th Basic Rent Payment Date (the Termination Date) by doing all of the following: (i) giving 120 days prior written notice to Lessor, (ii) paying to Lessor all rent and other amounts or indemnities accrued hereunder (including the rent payment due on such date, and including any damages or other compensatory amounts due to Lessor in respect of any uncured default), plus the amount indicated as "Termination Payment" in the Schedule below, by interbank wire transfer of federal funds on the Termination Date; (iii) making the terminated Equipment available for Lessor's inspection at least ten (10) business days prior to such Termination Date; and (iv) surrendering such Equipment in the condition required by the Master Lease Agreement and this Schedule to Lessor on the 24th of the month following the month in which the Termination Payment was made. This Schedule may not be terminated on any Payment Date other than a Payment Date indicated in the Termination Payment Schedule listed below. Such notice shall specify the Equipment to be terminated. If conditions (i), (ii) and (iii) are not fulfilled on the Termination Date, or if condition (iv) is not fulfilled as set forth above, then this Lease shall continue in full force and effect and any amounts paid shall be returned to Lessee within five (5) business days but without interest.

TERMINATION PAYMENT SCHEDULE

If Termination Date is <u>Payment Date No.</u>	Termination Payment As a Percentage of Lessor's Cost as defined in <u>this Schedule</u>
24	31.00%
30	28.20%
36	24.15%
48	16.00%

MAINTENANCE AND RETURN CONDITIONS

In furtherance, and not in limitation of, the use, maintenance and return conditions for the Equipment set forth in Section 6 of the Master Lease, Lessee hereby agrees to return Equipment in accordance therewith and with the following special conditions. (a) Lessee shall provide written notice 120 days prior to the Termination Date and/or the Expiration Date. (b) Lessee will maintain a maintenance contract with the Manufacturer covering at least eight hour per day use and operation of the Equipment. (c) Upon surrender, Lessee shall return the Equipment (including originals or copies of all maintenance and other logs, records and reports) to any location in the continental U.S. as designated by Lessor. (d) Lessee shall comply with and shall cause the Equipment to comply with the Equipment manufactures recommended maintenance and safety procedures, applicable insurance policies, and the laws, rules and regulations (including the Interchange Rules) of the Association of American Railroads, the United States Department of Transportation and any State or local authority having jurisdiction over the Equipment or its use. (e) Lessee shall effect any alteration or modification of the Equipment required (in order for the Equipment to be properly used for its intended purpose) in a directive issued during the Term by a governmental agency or authority having jurisdiction over the operation, safety or use of railroad equipment of the type comparable to the Equipment if such directive requires compliance within 180 days after the termination of this Schedule. (f) To the extent this Schedule is required to be acknowledged, registered, deposited, filed, or recorded under the laws of the United States or any other jurisdiction in which the Equipment will be located from time to time, in connection with its initial delivery hereunder or subsequent sale or financing, the Lessee will do and perform any other act and will execute, acknowledge, and deliver all further instruments required by law or reasonably requested by Lessor for the proper protection, to Lessor's satisfaction, of the rights in the Equipment of Lessor or any lending institution. (g) In lieu of return to the location of original delivery, Lessee will return the Equipment to Denver, CO, or to such other location as is mutually agreeable to Lessee and Lessor.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Schedule to be duly executed and delivered, as of the date noted above.

LEASE PLAN U.S.A., INC.
as Lessor

By: *Donald F. Kreft*
Title: President

[corporate seal]

PHILIP MORRIS INCORPORATED
as Lessee

By: *Robert Nikulay*
Title: *S. P. Marketing*

[corporate seal]

State of New York

County of New York, SS:

On this 8th day of December 1995, before me personally appeared Robert Nikulay, to me personally known, who being by me duly sworn, says that ~~(s)~~he is the V.P. of Philip Morris Incorporated, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and ~~(s)~~he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL of Notary]
KATHLEEN M. MULLIGAN
Notary Public, State of New York
Qualified in Suffolk County
Certificate Filed in New York County
Reg. #4883282 Expires Jan. 20, 1997

By: *Kathleen M. Mulligan*
My Commission expires:

State of Georgia

County of Fulton, SS:

On this 8th day of December 1995, before me personally appeared Donald F. Kreft, to me personally known, who being by me duly sworn, says that he is the President of Lease Plan U.S.A., Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL of Notary]

By: *Wanda E. Jackson*
My Commission expires:
Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 19, 1998

EXHIBIT 3 TO NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE

BILL OF SALE

LEASE PLAN U.S.A., INC. ("Lease Plan"), in consideration of the covenants and conditions contained in that Non-Recourse Assignment of Lease Schedule (the "Assignment Agreement"), of even date herewith, entered into between Lease Plan and MetLife Capital Limited Partnership, a Delaware limited partnership ("MetLife"), and other valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign, transfer and convey and has delivered unto MetLife, its successors and assigns, all of Lease Plan's right, title and interest in and to the herein described personal property (the "Equipment"), to have and to hold unto MetLife and its successors and assigns forever. The Equipment is described as follows:

Two (2) General Motors 1996 Electro-Motive F59PHI Locomotives, Vehicle ID #946543-0001 and #946543-0002

MetLife shall have the full benefit of the representations and warranties made and the remedies granted by Lease Plan in the Assignment Agreement with respect to the Equipment. LEASE PLAN MAKES NO OTHER WARRANTIES OR REPRESENTATIONS AS TO THE CONDITION OF THE EQUIPMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, OTHER THAN AS SET FORTH IN SUCH ASSIGNMENT AGREEMENT.

In consideration whereof, Lease Plan has caused this Bill of Sale to be executed on its behalf by its duly authorized officer on this 27th day of December, 1995.

LEASE PLAN U.S.A., INC.

By:

(Print Name)

Title:

John J. Stasiowski
John J. Stasiowski
President VP Credit Operations

STATE OF Georgia)
COUNTY OF Cobb)§

On this 27th day of December, 1995, before me, a Notary Public, personally appeared John J. Stasiowski and _____, to me known to be the VP Credit Operations and _____, respectively, of Lease Plan USA, Inc., who executed the foregoing instrument and acknowledged the said instrument was the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

[SEAL]

Wanda E. Jackson
Notary Public in and for the State of _____,
residing at _____.

My Commission expires: _____

Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 19, 1998

EXHIBIT 4 TO NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE

STIPULATED LOSS VALUES

0	12/29/95	104.842000%
1	1/25/95	105.824450%
2	2/25/95	105.247700%
3	3/25/95	104.870950%
4	4/25/95	104.094200%
5	5/25/95	103.517450%
6	6/25/95	102.940700%
7	7/25/95	102.363950%
8	8/25/95	101.787200%
9	9/25/95	101.210450%
10	10/25/95	100.633700%
11	11/25/95	100.056950%
12	12/25/95	99.480200%
13	1/25/96	98.903450%
14	2/25/96	98.326700%
15	3/25/96	97.749950%
16	4/25/96	97.173200%
17	5/25/96	96.596450%
18	6/25/96	96.019700%
19	7/25/96	95.442950%
20	8/25/96	94.866200%
21	9/25/96	94.289450%
22	10/25/96	93.712700%
23	11/25/96	93.135950%
24	12/25/96	92.559200%
25	1/25/97	91.760531%
26	2/25/97	90.963189%
27	3/25/97	90.168487%
28	4/25/97	89.375098%
29	5/25/97	88.583019%
30	6/25/97	87.759200%
31	7/25/97	86.750867%
32	8/25/97	85.742533%
33	9/25/97	84.734200%
34	10/25/97	83.725867%
35	11/25/97	82.717533%
36	12/25/97	81.709200%
37	1/25/98	80.696700%
38	2/25/98	79.684200%
39	3/25/98	78.671700%
40	4/25/98	77.659200%
41	5/25/98	76.646700%
42	6/25/98	75.634200%
43	7/25/98	74.621700%
44	8/25/98	73.609200%
45	9/25/98	72.596700%
46	10/25/98	71.584200%
47	11/25/98	70.571700%
48	12/25/98	69.559200%
49	1/25/99	67.684200%
50	2/25/99	65.809200%
51	3/25/99	63.934200%
52	4/25/99	62.059200%
53	5/25/99	60.184200%
54	6/25/99	58.309200%
55	7/25/99	56.434200%
56	8/25/99	54.559200%
57	9/25/99	52.684200%
58	10/25/99	50.809200%
59	11/25/99	48.934200%
60	12/25/99	45.500000%

EXHIBIT 5 TO NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE

POWER OF ATTORNEY

THIS POWER OF ATTORNEY authorizes METLIFE CAPITAL LIMITED PARTNERSHIP, a Delaware limited partnership, its agents, general partners, employees, successors and assigns, whose principal place of business is 10900 N.E. 4th Street, Suite 500, Bellevue, Washington 98004, to act as agent and attorney-in-fact for LEASE PLAN U.S.A., INC. in all matters pertaining to the transfer of or the application for original or duplicate title, registration, licenses, and/or renewals, transfer of license plates as well as transfer of ownership for any and all vehicles sold to MetLife Capital Limited Partnership and held in the name of "Lease Plan U.S.A., Inc.", or "Lease Plan U.S.A., Inc. as Agent."

LEASE PLAN U.S.A., INC.

By _____

(print name and title)

SUBSCRIBED AND SWORN TO BEFORE ME ON
THIS _____ DAY OF _____, 19____.

_____, Notary Public
(print name)

MY COMMISSION EXPIRES: _____

EXHIBIT 6 TO NON-RECOURSE ASSIGNMENT OF LEASE SCHEDULE

RESIDUAL SHARING CALCULATIONS

1. Assignee will receive, solely for its own account, the first 80% after 24 months, 74.7% after 36 months, 69.3% after 48 months, or 64.0% after 60 months, according to the "Renewal Term" as described in the Schedule, of the original equipment cost of the Equipment covered by the Non-Recourse Assignment of Lease Schedule to which this Exhibit 6 is attached.
2. Proceeds exceeding the amount described in paragraph 1 above shall be divided 50% to Assignee and 50% to Assignor.
3. The sales proceeds from the sale of the Equipment and/or all rental payment for lease shall be paid directly to Assignee and subject to the terms and conditions of that Re-Marketing Agreement (the "Re-Marketing Agreement"), dated as of August 1, 1993, by and between Assignor and Assignee. Assignee shall pay Assignor its residual share promptly upon receiving notice from Assignee's bank that the sales proceeds or the first rental payment on an extension, renewal or new lease have been collected in good funds, all in accordance with the terms and provisions of the Re-Marketing Agreement.

METLIFE CAPITAL, LIMITED PARTNERSHIP
by: METLIFE CAPITAL CORPORATION, General Partner

LEASE PLAN U.S.A., INC.

By: _____

Vince Iasi, Vice President

By: _____

Donald B. Klett, President

V.P. Credit Operations

Lessee Name: Philip Morris Incorporated

Master Lease No.: 40043

Lease Schedule No.: 95-1

STATE OF Georgia

COUNTY OF Cobb

On this 27th day of December, 1995, before me, a Notary Public, personally appeared John J. Stasiowski and _____, to me known to be the VP Credit Operations and _____, respectively, of Lease Plan USA, Inc. who executed the foregoing instrument and acknowledged the said instrument was the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

[SEAL]

Wanda E. Jackson
Notary Public in and for the State of _____,
residing at _____

Notary Public, DeKalb County, Georgia
My Commission Expires Jan. 19, 1998

My Commission expires: _____

STATE OF WA)
COUNTY OF KING) §

On this 28th day of December, 1995, before me, a Notary Public, personally appeared Vince Taci and _____, to me known to be the Vice President and _____, respectively, of MetLife Capital, Limited Partnership, who executed the foregoing instrument and acknowledged the said instrument was the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

[SEAL]

Renee F. Harrison
Notary Public in and for the State of WA,
residing at Kirkland.

My Commission expires: 12/1/97